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WOODARD, EMHARDT, MORIARTY,
MCNETT & HENRY LLP
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS IN 46204-5137

In re Application of:	:	
DER RUITER, Ernest	:	DECISION ON PETITION
U.S. Application No.: 10/567,794	:	
PCT No.: PCT/EP2004/008314	:	
International Filing Date: 24 July 2004	:	
Priority Date: 11 August 2003	:	
Atty Docket No.: 8312-7/05.1816.6.do	:	
For: ACTIVATED CHARCOAL	:	
PRODUCTION	:	

This decision is issued in response to the "Request To Withdraw Holding Of Abandonment" filed 07 January 2008, treated herein as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 24 July 2004, applicant filed international application PCT/EP2004/008314. The international application claimed a priority date of 11 August 2003, and it designated the United States. On 24 February 2005, the International Bureau (IB) communicated a copy of the international application to the United States Patent And Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 11 February 2006.

On 09 February 2006, applicant filed a Transmittal Letter requesting entry into the national stage in the United States accompanied by, among other materials, payment of the small entity basic national fee, an executed declaration, and an English translation of the international application as filed.

On 11 August 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that a translation of the international application as filed and the processing fee for filing such translation later than thirty months after the priority date were required.

On 11 December 2007, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a response to the Notification Of Missing Requirements.

On 07 January 2008, applicant filed the petition considered herein. The petition asserts that on 18 September 2006 applicant filed a timely and proper response to the Notification Of Missing Requirements, including a translation of the international application as filed, and that the holding of abandonment should therefore be withdrawn. The petition is accompanied by evidence of the previous submission, including copies of the materials filed and a return postcard that itemizes these materials and bears a USPTO receipt stamp dated 18 September 2006.

DISCUSSION

As noted above, the present petition includes a copy of the English translation purportedly filed on 18 September 2006, as well as a copy of the return postcard that itemizes these materials and bears a USPTO receipt stamp dated 18 September 2006. In addition, USPTO records confirm receipt of the \$130 processing fee included with the 18 September 2006 submission on 18 September 2006. Based on the statements in the present petition, the attached return postcard, and USPTO records regarding the processing fee payment, it is concluded that the materials accompanying the present petition, including the English translation of the international application as filed, were originally filed herein on 18 September 2006 as a timely response to the Notification Of Missing Requirements mailed 11 August 2006.

The Notification of Abandonment mailed 11 December 2007, based as it was on applicants' purported failure to file a timely response to the Notification Of Missing Requirements, is appropriately vacated.

Moreover, a review of the application file reveals that the original national stage materials filed on 09 February 2006 included an English translation of the original PCT filing text. Accordingly, the Notification Of Missing Requirements mailed 11 August 2006, which indicated that a translation of the original international application had not been submitted, is also appropriately vacated.

Based on applicant's 09 February 2006 filing of an English translation of the international application, the \$130 processing fee for filing the English translation later than thirty months after the priority date was not required herein. Such processing fee is therefore appropriately refunded to applicant.

CONCLUSION

The petition to withdraw the holding of abandonment is **GRANTED**.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 11 December 2007 and the Notification of Missing Requirements (Form PCT/DO/EO/905) mailed 11 August 2006 are hereby **VACATED**.

The application file reveals that an English translation of the original international application was included in the application materials filed 09 February 2006.

The \$130 processing fee for filing the English translation later than thirty months after the priority date will be refunded to applicant.

This application is being returned to the National Stage Processing Branch of the Office of PCT operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 09 February 2006.



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